3306.

SUPREME COURT OF THE UNITED STATES.

No. 100.

JAMES IRWIN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT U. S., FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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GIDEON, Print.

Among the rolls, records, and judicial proceedings of the circuit court of the United States, for the western district of Pennsylvania, may be found the following words and figures, viz:

No. 1 of May term, 1852.—Bill in equity, filed February 14th, 1852.

THE UNITED STATES OF AMERICA
vs.
JAMES IRWIN. } In equity.

Bill in equity.

To the honorable the judges of the circuit court of the United States, for the western district of Pennsylvania.

The United States of America bring this their bill against James Irwin, a citizen of the State of Pennsylvania; and, thereupon, your orators complain and say:

That William F. Hamilton and William V. Robinson, by force and virtue of divers conveyances and assurances, had become and were, on the 26th day of November, A. D. 1836, seized in fee, subject to a certain rent charge, of and in a certain lot of ground situate in Peebles township, in the county of Allegheny, in the State aforesaid, and within the western district aforesaid, together with certain rights and privileges thereto appurtenant, among which was the right and privilege to use the water of a certain spring situate near the said premises and lot of ground, being the spring by which the woollen factory of the said Hamilton and Robinson was then supplied; and being so seized, the said William V. Robinson and Mary Ann, his wife, and the said William F. Hamilton, by their joint deed, dated the day and year last aforesaid, did then, for the consideration of two thousand dollars paid unto them by your orators, grant and convey in fee unto your orators the right and privilege to use, direct, and carry away from the said fountain or spring so much water as would pass through a pipe or tube of equal diameter with one that should convey the water from the said spring, upon the same level therewith, to the said woollen factory of the said Hamilton and Robinson, and to proceed from a common cistern or head, to be by your orators there erected; and to convey and conduct the same by tubes or pipes through the premises of the said grantors in a direct line or as nearly as practicable thereto; and the privilege of entering upon the premises of the said grantors for the purpose of laying, and when necessary altering, the said pipes or repairing them; also the privilege of erecting and repairing such cistern or reservoir or other erection as might be deemed necessary for preserving the said water for the use aforesaid; and also, all other rights and privileges in common with the said grantors, their heirs and assigns, which were secured

by the several deeds therein recited and mentioned, under which they the said grantors held and enjoyed the said water-right and privilege with the appurtenances, as will fully appear by reference to the said deed from the said Hamilton and Robinson to your orators, a true copy of which marked "A" is herewith filed and made part of this your orators' bill.

And your orators allege and submit that by virtue of the said grant made to them by the said deed as aforesaid, according to the true meaning and intent of the said deed, marked "A," they became, were and are tenants in common in equal shares with the said grantors and their assigns, of the said water-right and privilege, and might then and still may rightfully draw from the said common vessel or cistern for their use one equal half part of said water, and conduct the same by proper and convenient pipes through the premises of the said grantors and their assigns, to be used by your orators at their arsenal situate in the vicinity of the said spring, for the supplying of which with water the said water-right was purchased by your orators as aforesaid.

And your orators further say and aver, that the construction and interpretation of the said deed to them from the said Hamilton and Robinson herein before stated, and claimed by your orators to be the true and proper one, was the construction and interpretation at all times given thereto by the said Hamilton and Robinson, the grantors in said deed, while they the said grantors continued to hold, use and enjoy the said water-right and privilege in common with your orators; and that such was the construction and interpretation given thereto by one William Black, in whom the estate, right, title and interest of the said Hamilton and Robinson in the said premises afterwards became vested; and by whom (the said William Black) the same was, by deed dated the 13th day of January, A. D. 1848, granted and conveyed to the said defendants. And your orators further say, that in the said last mentioned deed accepted and taken by the defendant from the said William Black, the said grant and conveyance made by the said Hamilton and Robinson to your orators as aforesaid is mentioned and referred to; and is distinctly declared to be a grant and conveyance of one-half of the water of said spring, as will appear by reference to the said deed from the said William Black to the said defendant, a true copy of which, marked "B," is herewith filed and made part of your orators' bill.

And your orators further say, that after the said grant made to them as aforesaid, in exercise of the rights thereby conferred on them, they, by their servants and agents in that behalf, did, in the year of our Lord 1837, enter on the said premises in which the said spring is situated, and did build and construct a common vessel or cistern to receive the water of said spring for the common use of your orators and the said Hamilton and Robinson. That the said vessel or cistern was then and continued to be pierced with two circular holes or tubes of equal diameter, having their axes horizontal or level, and of equal depth below the surface of the water in the said vessel or cistern; one of said holes or tubes being intended for the supplying of the said arsenal of your

orators, and the other for the supplying of the said works or factory of the said Hamilton and Robinson. That your orators also proceeded to lay through the premises of the said Hamilton and Robinson pipes for the conveyance of the water drawn from said vessel or cistern by one of the said holes or tubes, to their arsenal.

And your orators further say, that during the time in which the said vessel or cistern was being built and constructed and pierced as aforesaid, and while the said pipes for conveying the water therefrom to the said arsenal were being laid as aforesaid, the said Hamilton and Robinson, then tenants in common with your orators of the use of said water, were frequently present and observed the said arrangements and means then being made and adopted for the division of the said water between them and your orators, and for the conveyance of your orators' part and share thereof to the said arsenal; and that they, the said Hamilton and Robinson, made no objections thereto, but on the contrary, as your orators believe, fully and entirely approved of the same.

And your orators further say, that the said means and arrangement for the drawing out and carrying away of your orators' share and portion of said water, then adopted and put in use with the approbation of the said Hamilton and Robinson, have continued from that time and still continue the same and without change; and that your orators continued, by means of the said arrangements herein before described, to draw off and conduct away their part and share of said water to their said arsenal, without any interruption, hindrance, objection or complaint from the said Hamilton and Robinson, or their grantees, for a period of some twelve years.

And your orators further say, that they have not at any time heretofore drawn out, carried away or used, nor do they now draw out, carry away or use, more than one equal half part of said water, and have, as they believe, in all things and respects, kept and do still keep themselves strictly within the limits of the rights and privileges so granted to them by the said Hamilton and Robinson, as aforesaid.

But now so it is, that the said defendant, confederating, &c., and contriving to injure your orators in the premises, and to hinder them from fully and freely using and enjoying their proper share and part of the said water, and thereby, as your orators believe, to compel them to purchase the right to the residue of the water of said spring from him, the said defendant, the present owner thereof, at an exorbitant price, he, the said defendant, after his said purchase of the residue of said water from the said William Black, began to pretend and now pretends that your orators are and have been using a quantity and part of said water greater than that to which they have a legal right, and have been and are using a pipe for the conveyance of the water of said spring to said arsenal which is over four times the capacity of that contracted for with the said Hamilton and Robinson; and the said defendant further pretends that your orators are restricted by the terms of the said grant from Hamilton and Robinson to the use of a pipe for the conveyance of said water from said spring to said arsenal, of uniform

diameter throughout its whole length from said spring to said arsenal; whereas your orators charge the contrary of all such pretences to be true, and aver that inasmuch as the distance of said arsenal from said spring is five hundred and forty-seven yards, while the distance of the said defendant's factory and works from said spring is only about one hundred and forty-four yards, if the water were conveyed from said spring to said arsenal by a pipe of the proper size at its insertion in said vessel or cistern, and preserving the same size or diameter throughout its whole length from said spring to said arsenal, your orators would not thereby be able to receive one-half of said water, in consequence of the greater resistance offered to the flow of the water in the said pipe by reason of its length, being more than three times the length of the pipe used by the said defendant.

And your orators further charge, that after your orators and the said defendant have drawn from the said common vessel or cistern their respective shares and portions of said water by holes or tubes made or inserted in said vessel of equal size and diameter, and on the same level, that each of said parties may then carry and convey away the water so drawn out by a pipe or pipes of such size and diameter as each may think proper and see fit to adopt, and that neither your orators nor the said defendant are restricted to the use of a pipe of the same diameter or bore throughout its whole length, as at the point of insertion in the said vessel or cistern.

And your orators further charge, that the said defendant, at the time he purchased the said premises from the said William Black as aforesaid, well knew the extent of the right and privilege granted to and claimed by your orators under the said deed to them from Hamilton and Robinson; and that he was well aware that said grant to your orators gave them a right to the one-half part of the water of said spring; and that it is so declared and expressed in the deed from said William Black to him under which the defendant, as your orators are informed and believe, claims title.

And your orators further charge, that the said defendant threatens and intends, unless your orators comply with his said unreasonable and unjust demands, to cut off the said pipes by which the said water is conveyed from said spring to your orators' said arsenal, and wholly deprive your orators of the use of said water; and has addressed to Major Bell, your orators' officer in command of said arsenal, a letter dated January 16th, 1852, containing divers such threats, of which said letter a true copy marked "C" is herewith filed and made part of this bill.

And your orators further charge, that if said defendant should execute his said threats and cut off said pipes, it will greatly hinder and interrupt the works and operations carried on at your orators' said arsenal, and do and cause to your orators great and irreparable injury and mischief, and that the said defendant ought to be restrained therefrom, and from in any wise disturbing, interrupting or interfering with the arrangement and means employed and adopted by your orators for the conveyance of the said water of said spring to their said arsenal as

aforesaid. All which actings, doings, pretences and threats are contrary to equity, and tend to the manifest wrong, injury of your orators in the premises. In consideration whereof, and for as much as your orators can have adequate relief in the premises only in a court of equity, where matters of this kind are properly cognisable and relievable: To the end, therefore, that the said James Irwin, the defendant, may, if he can, show why your orators should not have the relief hereby prayed, and may upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters and things herein before set forth, alleged, charged and averred, as fully and particularly as though he was specially interrogated thereto.

And that the said defendant may be restrained by the injunction of this honorable court from disturbing, molesting, cutting off or in any wise injuring the pipe or pipes which convey the water from the said spring to your orators' said arsenal; and from disturbing, breaking, or in any wise injuring the said vessel or cistern from which the said water for the use of your orators' arsenal is supplied as aforesaid; and from doing all and any act or acts, thing or things which would cut off or diminish the quantity of water which your orators now receive from the spring aforesaid for the use of their said arsenal.

May it please your honors to grant unto your orators, not only the United States writ of injunction under the seal of this honorable court, to be directed unto the said James Irwin, to restrain him, his servants, workmen and agents from disturbing, molesting, cutting off or in any wise injuring the said pipe or pipes which convey the water from the said spring to your orators' said arsenal; and from molesting, disturbing, breaking or in any wise injuring the said vessel or cistern from which said water, for the use of said arsenal, is supplied as aforesaid; and from doing all and any act or acts, thing or things tending to cut off or diminish the quantity of water now received from the said spring for the supply of the said arsenal; but also the United States writ of subpœna to be directed to the said James Irwin, thereby commanding him at a certain day and under a certain pain therein to be limited, to be and appear before this honorable court, then and there, full, true, direct and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction and decree therein, as to your honorable court shall seem meet, &c.

And your orators will ever pray, &c.

J. BOWMAN SWEITZER,
District attorney.
JAMES J. KUHN,
Attorney of complainants.

Whereupon the following notice and subpœna were issued and served by the marshal:

The UNITED STATES OF AMERICA vs. JAMES IRWIN. } No. 1, of May term, 1852—In equity.

To James Irwin, the defendant above named.

You will please to take notice that a bill in chancery in the above case has been filed in the circuit court of the United States for the western district of Pennsylvania, praying for an injunction to restrain you from cutting off the pipes of the United States supplying their arsenal with water; and that on Tuesday next at 10 o'clock, a. m., of said day a motion will be made in said court for an injunction as in said bill prayed, &c.

J. BOWMAN SWEITZER,
District attorney.

February 14th, 1852.

Copy of subpœna.

UNITED STATES OF AMERICA,
Western district of Pennsylvania, ss.

The President of the United States, to James Irwin.

[SEAL.] For certain causes offered before the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit; in the bill in quity, of the United States of America:

We command, and strictly enjoin you, James Irwin, that laying aside all other matters, and notwithstanding any excuse, you personally be and appear before the judge of the said court, at a session of the same court, to be holden at Pittsburgh on the first Monday of April next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And this you are in no wise to omit, under the penalty of ten thousand dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Pittsburgh, this fourteenth day of February, A. D. 1852, and of the independence of the United States the seventy-sixth.

H. SPROUL, *Clerk.*

The defendant is required to enter appearance in this suit on or before the return day of this writ, otherwise the bill may be taken pro confesso.

And afterwards, to wit, on the 17th day of February, 1852, the motion for an injunction in this case came on to be heard, and was argued by counsel; and after full hearing and due consideration, it is ordered that the injunction issue, as prayed for in complainants' bill of complaint, until answer filed and the further order of the court.

Whereupon, to wit, February 17th, 1852, the following injunction was issued:

Copy of injunction.

In the circuit court of the United States, for the western district of Pennsylvania.

The President of the United States, to the marshal of the western district of Pennsylvania, greeting:

And to James Irwin, of Allegheny county, in the State of Pennsylvania, and to counsellors, attorneys, solicitors and agents, and all other persons, and each and every of them.

Whereas it has been represented to us in our circuit court, in equity, for the western district of Pennsylvania, on the part of the United States, complainant, that they have lately exhibited their bill of complaint in our said court against you, the said James Irwin, to be relieved touching the matters therein complained of, in which bill it is stated, among other things, that you are contriving and confederating to injure the said complainants touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience:

We therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly enjoin you, the said James Irwin, and all other person or persons, and each and every of you, under the penalty of ten thousand , to be levied of your lands and tenements, goods and chattels, to our use, that you do absolutely desist and refrain from cutting or injuring the pipe or pipes, tube or tubes, leading from a cistern or spring to the Allegheny arsenal, or from injuring or hindering the passage of the water from the said spring to said arsenal; and from disturbing or in any wise injuring the vessel or cistern by which the full supply of the water to the said arsenal may be hindered, as set forth in the bill of complaint of the United States, until answer filed and the further order of this court.

Witness the Hon. Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Pittsburgh, this seventeenth day of February, A. D. 1852, and of the independence of the United States the seventy-sixth.

[SEAL.] H. SPROUL, *Clerk.*

Returned, served February 18th, 1852, by
JOHN DICKEY, *Marshal.*

Whereupon, to wit, April 5th, 1852, the following answer was filed:

Answer.

To the honorable the judges of the circuit court of the United States, for the western district of Pennsylvania.

The answer of James Irwin, defendant, to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may

be had or taken to the many errors, uncertainties and other imperfections in the said complainants' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, saith: That true it is that the said William F. Hamilton and William V. Robinson, in the complainants' bill mentioned, were seized of the premises therein described, together with the privilege of using the water of a certain spring situated near the said premises, as appurtenant thereto; and that they being so seized, did, on the 26th day of November, A. D. 1836, grant and convey unto the complainants the right and privilege to use, divert and carry away from the said spring so much water as would pass through a pipe or tube of equal diameter with one that should convey the water from the said spring, upon the same level therewith, to the factory of the said grantors, and to proceed from a common cistern or head to be erected by the said complainants; and to convey and conduct the same by tubes or pipes through the premises of the said grantors in a direct line, or as nearly as practicable thereto; and the privilege of entering upon the premises of the said grantor for the purpose of laying, and when necessary altering, the said pipes, or repairing them; and also the privilege of erecting and repairing such cistern or reservoir, or other erection as might be deemed necessary for preserving the said water for the use aforesaid; and also all other rights and privileges in common with the said grantors, their heirs and assigns, which are secured by the several deeds therein recited and mentioned, under which they, the said grantors, held and enjoyed the said water-right and privileges, and the appurtenances; and that the defendant afterwards became seized by divers good and sufficient conveyances, as alleged, of all the right, title, interest and claim of the said Hamilton and Robinson to and in the premises, with the appurtenances. But this respondent denies that by virtue of the said grant the said complainants became, or are, tenants in common, in equal shares with the said grantors and their assigns, of the said water-right and privilege, and might then, or may now, rightfully draw from the said common vessel for their use one equal half part of said water, and conduct the same by proper and convenient pipes through the premises of the said grantors and their assigns, to be used by the complainants at their arsenal, situate in the vicinity of the said spring, for the supplying of which with water the said water-right is alleged to have been purchased by the complainants; because he says that the said Hamilton and Robinson became seized of the right of diverting the said water from the said spring, and entering upon the enclosure within which the same was contained, by virtue of a conveyance to them by one Samuel Ewalt and wife, dated on the 21st day of November, A. D. 1836, of the right and privilege to use, divert and carry away from the said spring, by which their woollen factory was then supplied, so much of the water of said spring as should fill, under a head of four inches, with a constant stream, a pipe or tube not exceeding one inch square, and to carry away the same by

tubes or pipes of any convenient size, through the premises of the said Samuel Ewalt in a direct line, or as nearly as practicable thereto; and to enter upon the land through which the said pipes might pass, for the purpose of excavating the same, and of laying, examining, raising and repairing said pipes, at any time or times, as will more fully appear by the said deed of the said Samuel Ewalt and wife to the said Hamilton & Robinson, a true copy of which, marked "A," is herewith filed and made part of this answer; and that the said complainants are only entitled by virtue of the above recited conveyance from the said Hamilton & Robinson, under which they claim, to so much of the said water as will pass through a pipe or tube of equal diameter with one that should convey the water from the said spring, upon the same level therewith, to the factory of the said grantors, without any limitation or restriction as to the rights of the said grantors to use any portion of the said water for other purposes, and leaving the rights of the complainants dependent upon the dimensions of the pipe by which is actually conveyed the amount of water drawn by the grantors and their assigns to the factory aforesaid.

And for further answer to the bill of the complainants, this defendant answering saith: That although the said complainants were permitted by the said Hamilton & Robinson to lay down their pipes of a dimension far exceeding those which had been, or have at any time been used to convey the said water to the factory aforesaid, without objection upon the part of said Hamilton & Robinson, this defendant is advised and verily believes that the same was permitted because the said Hamilton & Robinson were not then carrying on business of any kind at the said factory, or using the said water, or any part thereof, for the purposes of the same; and with the express understanding and reservation that the license or permission thus temporarily given should not be taken to operate in any way to the enlargement of the rights of the complainant, or the prejudice of those of the said Hamilton & Robinson or their assigns, and that the said defendant was not advised at the time of his purchase of the dimensions of the pipes then used by complainants, or that they were exceeding their rights under the conveyance aforesaid, and had no means of ascertaining the same; but was, on the contrary, led to suppose, from the dimensions of the vent or orifice through which the water was drawn by the complainants, that the pipes or tubes which were then, and are still, entirely concealed from view corresponded entirely therewith.

And for further answer to the bill of the complainants, this defendant answering saith: That the recital in the deed made by William Black to himself, and referred to in the complainants' bill, is not to be taken either as an interpretation of the terms and meaning of the said recited conveyance from the said Hamilton & Robinson to the complainants, or as the assertion or admission of a right on the part of the complainants to use one-half of the said water, or as operating or intended to operate in any way as an enlargement of the rights of the complainants, because he says that no portion of the said water was

used by the said William Black for said factory; and the said conveyance, although mentioned and referred to as of a privilege for one-half of the spring, is set forth, not by way of affirmance or recognition of a right on part of the complainants, but merely as a part of the chain of title; and with express reference to the deed itself and the record thereof for the details, both of which manifestly show that the same was a misdescription or a mistake of the scrivener in the recital thereof, and in no way affecting the conveyance to the defendant, which is the whole interest of the said William Black.

And the defendant respectfully submits, that although such an impression may have existed in the mind of the said Black, neither he nor the defendant, who is his assignee, is to be concluded or affected by any mistake in regard to his rights, in a conveyance to which the complainants were neither parties nor privies.

And for further answer to the bill of the complainants, this defendant answering saith: That true it is that the said complainants, after the said grant made to them as aforesaid, did enter as alleged upon the premises upon which the said spring is situated, and did build and construct a common vessel or cistern to receive the water of said spring for the common use of the said complainants and the said Hamilton and Robinson; and that the said cistern was then, and continued to be, pierced with two circular holes of equal diameter, having their axes horizontal or level, and of equal depth below the surface of the water in the said vessel or cistern, one of the said holes being intended for the supply of the arsenal of the complainants, and the other of the said works or factory of the said Hamilton & Robinson; and that the said complainants proceeded also to lay through the premises of the said Hamilton and Robinson a pipe for the conveyance of the water drawn from said vessel or cistern by one of said holes or orifices. He denies, however, that the said cistern was then or continued to be pierced with two tubes of equal diameter, or with any tubes whatever, as is alleged in the complainants' bill; or that the complainants proceeded to lay through the premises aforesaid any pipes or tubes for the conveyance of the water drawn from said vessel or cistern by either of said holes or orifices, of a dimension corresponding, as is insinuated though not expressed, with either of said holes, or of equal diameter with the tubes or pipes which were used for supplying the works or factory of the said Hamilton & Robinson; but on the contrary, he avers, and is ready to prove as this court shall direct, that although the pipe or tube which was then used, and has since continued to be used, for the purpose of supplying the said works or factory of the said Hamilton and Robinson, has at no time exceeded the diameter of one inch, and has conformed precisely in its position and level to one of the holes or orifices aforesaid, yet the said complainants, not regarding the just boundary of their right, but presuming, as he believes, upon their sovereignty and legal impunity, have laid down and used through the premises of the said Hamilton and Robinson, now belonging to the defendant, a tube of the diameter of about two and a half inches, with a capacity more

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than six times that of the tube used for the purpose of conveying the water to the works or factory aforesaid, and not conforming in its level or elevation with either of the orifices aforesaid, but affixed to the exterior circumference or rim of the said cistern in such a manner as to extend below the said orifice, and to increase the weight or head of water to the extent of about seven-eighths of an inch over and above that of the defendant.

And for further answer to the bill of the complainants, this defendant answering saith, as before, that if the fact be—which he does not admit, but insists on the proof thereof—that the said Hamilton and Robinson were frequently present and observed the said arrangement and means then adopted by complainants for a division of the said water, and for the conveyance thereof to the arsenal of the complainants, and that they made no objection thereto, and that the said Hamilton and Robinson fully and entirely approved the same, as is alleged, be true, he is advised that it is done for the reason that the said Hamilton and Robinson were not then using or requiring any of the said water for the purposes of their factory, with the understanding that the enjoyment on the part of the complainants should be dependent upon their pleasure, and without detriment to their rights whenever they might think proper to resume them. And he again submits that the long continuance of the said license, by the permission and forbearance of the said Hamilton and Robinson, and their assigns, which is readily to be accounted for by the fact that the said factory, with its appurtenances, has frequently changed hands, and the said water has not, therefore, been required for its uses, is not to be interpreted, from the mere fact of non-user, into the absolute surrender of an important right to the complainants.

And, for further answer to the bill of the complainants, the defendant answering saith, protesting that the allegation of the complainants that they have not heretofore, nor do they now, draw out or carry away, or use more than one equal half part of said water, is altogether immaterial, and he is not required to make answer thereto; altogether denies that the said complainants have in all things and respects kept or do keep within the limits of the rights and privileges so granted to them by the said Hamilton and Robinson, as aforesaid, but have exceeded and disregarded the same by diverting and carrying away from the said spring a much larger quantity of water than would pass through a pipe of equal diameter with that which has at all times conveyed, and still continues to convey, the water from the said spring upon the same level therewith to the factory of the said defendant.

And for further answer to the bill of the complainants, this defendant answering saith, that true it is that he has ever claimed, since he became seized of the interest of the said William Black in the premises, under the conveyance recited in the complainants' bill, and does now claim and assert, that the complainants are and have been using a quantity and portion of said water greater than that to which they have a legal right, and have been and are using a pipe for the conveyance of

the water of said spring to their said arsenal, which is over six times the capacity of that contracted for by said Hamilton & Robinson; but it is not true that he pretends that the complainants are restricted, by the terms of the said grant from Hamilton & Robinson, to the use of a pipe or tube for the conveyance of said water from said spring to said arsenal which shall necessarily be of uniform diameter throughout its whole length, or to any other pipe or tube than one which shall be of equal diameter with that which conveys the water to the factory of the defendant.

And for further answer to the bill of the complainants, this defendant answering saith, that although it be true, as alleged in the complainants' bill, that the distance of complainants' arsenal from the spring aforesaid is nearly four times as great as that of the defendant's factory, and works from the same point, and that, in consequence thereof, if the water were conveyed from said spring to said arsenal by a pipe of the proper size at its insertion in the said vessel or cistern, and pursuing the same size or diameter throughout its whole length from said spring to said arsenal, the complainants would not thereby be able to receive one-half of said water by reason of the greater resistance offered to the flow of the water in said pipe in consequence of its greater length, then it is clear upon the showing of the complainants themselves that the grant under which they claim is not, in substance or effect, as it clearly is not in terms, a grant of a privilege to divert and carry away an equal moiety or half part of the said water, seeing that it is admitted that a pipe or tube of equal diameter with that which is used to convey the water to the factory of the defendant will not convey an equal portion of the said water to the arsenal of the complainants.

And this defendant, protesting that the tube or pipe of the complainants is on a lower level than that of the defendant, altogether denies that after the said complainants and himself have drawn from the said common vessel or cistern their respective shares and portions of said water, by holes made or tubes inserted in said vessel, of equal size and diameter and on the same level, that each of said parties may then carry and convey away the water so drawn out by a pipe or pipes of such size and diameter as each may think proper and see fit to adopt; because he says that although the said defendant is himself in no way restricted by the grant to the complainant in regard to the size or calibre of the pipe which he may think proper to use for the purpose of conveying away the water to his said factory, the share or portion of the said complainants is, on the other hand, made expressly dependent upon and is only ascertainable by the dimensions of the pipe or tube which he may think proper to use, and to which they are, by the terms of the said grant, necessarily required to conform, in order to the ascertainment of their proper share or proportion of said water.

And the said respondent, admitting that he had notice from the deed of said Hamilton and Robinson at the time he purchased the said premises from the said William Black, of the extent of the rights and privileges granted to the said complainants, altogether denies that he

was otherwise personally advised of the extent of their claim, or that he was well aware that said grant to the complainants gave them a right to use one half part of the water of the said spring; but on the contrary he avers and maintains that it confers no such right, irrespective of the length or dimensions of their pipe, and although it may have been so expressed in the deed of the said William Black, the said recital was founded on a mere mistake, as shown by the deed itself, and nowise effected the rights of the said Black, all of which became vested by the said deed in this defendant.

And the defendant further says, that the pipes or tubes laid down by the complainants through the land now owned by the defendant, (and to which the rights claimed by him are appurtenant,) and used by them for the purpose of conveying the water from the said spring to their said arsenal, are of the dimension of two and three-quarter inches from the hole or orifice in said vessel or cistern, (and seven-eighths of an inch below the rim or circumference of said hole,) for an extent of about eighteen inches, and from that point down of a uniform diameter of two and a half inches; while the pipes used by the said defendants heretofore and now, for the purpose of conveying water from said cistern to his said factory, have never exceeded a diameter of one inch, and correspond precisely in elevation with the holes aforesaid, thereby giving to the complainant the advantage as well of a larger head, as of a capacity six-fold that of the defendant, and so far exceeding the just rights of the complainants; and that feeling himself injured thereby, he has endeavored for a period of three years and upwards to obtain from the complainants a redress and removal of the injury, or such compensation for its continuance as he considered it to be worth; that he has accordingly addressed himself from time to time to the proper agents of the complainants, as well the officers in command at the said arsenal, as the authorities at Washington city; and that after repeated applications he has been advised of the determination of the complainants to persist in their wrongful acts, under the plea and pretence that they were in no wise exceeding their rights, and were well authorized to continue the use of the pipes heretofore and at present occupied by them; that seeing he had no means of redress, or of testing the rights of the parties, but the assertion of his common law right to cut off said pipes and arrest the flow of the said water through his own land, and in order to do as little injury as possible to the complainants, as well as to determine any license which they might have claimed under past indulgence, he addressed a note, as charged, to their agent, declaring his determination to cut the same off unless they were changed and reduced in such a manner and to such elevation and dimensions as will make them conform to the just limits and boundaries of the rights and privileges conferred upon the complainants by the parties under whom the said defendant derives title as aforesaid; all which he claims and insists, and is ready to prove as this honorable court shall award, that he has perfect right to do; and humbly prays to be hence dis-

missed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES IRWIN.
THOS. WILLIAMS,
Solicitor for defendant.

UNITED STATES OF AMERICA,
Western district of Pennsylvania, ss.

James Irwin, being duly sworn, doth depose and say, that the facts set forth in the foregoing answer, as of his own knowledge, are true; and the facts set forth therein on the information of others, he verily believes to be true.

JAMES IRWIN.

Sworn and subscribed before me, this 5th day of April, 1852.
H. SPROUL, *Commissioner.*

Replication to answer of defendants.

In the circuit court of the United States, for the western district of Pennsylvania. Of term, A. D., 1852. No. .

THE UNITED STATES OF AMERICA, comp'ts,
vs.
JAMES IRWIN, defendant. } In chancery.

The replication of the United States of America, complainants, to the answer of James Irwin, defendant.

These repliants, saving and reserving to themselves all and all manner of advantages of exceptions to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient as laid to be answered unto, and that the said answer of the said defendant is untrue and insufficient to be replied unto by these repliants, without this that any other matter or thing in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

J. B. SWEITZER,
District attorney, &c.
J. J. KUHN,
Attorney of complainants.

And afterwards, to wit, November 19th, 1852, this cause came on to be heard upon bill, answer, replication, exhibits, and testimony, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz: that the injunction

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heretofore awarded be made perpetual, and that the defendant, James Irwin, pay the costs, &c.

And afterwards, to wit, May 24th, 1853, the respondent, James Irwin, appeals from the decree of the court granting an injunction in the above cause, and prays that the same may be allowed.

THOS. WILLIAMS,
Attorney for respondent.

Appeal allowed upon the usual terms of security, for costs and proof as to value of property in dispute and matter in controversy.

R. C. GRIER, *Circ't Judge.*

May 24th, 1853.

I, Henry Sproul, clerk of the circuit court of the United States, for the western district of Pennsylvania, do hereby certify, that security for costs has been regularly entered in the case of the United States *vs.* James Irwin, No. 1, of May term, 1852; and I consider the security entered sufficient for the amount.

H. SPROUL, *Clerk.*

Proof of value of matter in controversy.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the western district of Pennsylvania.

No. 1, of May term, 1852.

THE UNITED STATES OF AMERICA
vs.
JAMES IRWIN.
} In equity.

And now, to wit, June 23d, 1853, before me, Henry Sproul, a commissioner duly appointed by the circuit court of the United States, for the western district of Pennsylvania, under and by virtue of the act of Congress to take affidavits and bail, &c., personally appeared George Ledlie, a witness, of lawful age, who being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did testify and say as follows: I am acquainted with the property in controversy between the parties, and am advised as to the matter in dispute in the above case, and believe the matter in controversy would be worth over two thousand dollars; if it were mine and I were in the position of the defendant, I would not take that sum for it.

G. LEDLIE.
H. SPROUL, *U. S. Com'r.*

James Irwin, the defendant, sworn. I consider the matter in controversy between myself and the United States in the above case worth the sum of five thousand dollars.

JAMES IRWIN.
H. SPROUL, *U. S. Com'r.*

Exhibit "A," referred to in the foregoing bill.

This indenture, made the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and thirty-six, between William F. Hamilton and William V. Robinson and Mary Anne his wife, of Peebles township, in the county of Allegheny and commonwealth of Pennsylvania, of the one part, and the United States of America of the second part, witnesseth: That the said William F. Hamilton and William V. Robinson and Mary Anne his wife, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, unto us well and truly paid by the said United States of America, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said United States of America, its successors and assigns, the right and privilege to use, divert, and carry away from the fountain spring by which the woollen factory of the said Hamilton and Robinson, the parties of the first part, is now supplied, situate in Peebles township, in the county of Allegheny, and commonwealth aforesaid, so much water as will pass through a pipe or tube of equal diameter with one that shall convey the water from the said spring upon the same level therewith to the factory of the said grantors, and to proceed from a common cistern or head to be erected by the said United States, and to convey and conduct the same, by tubes or pipes, through the premises of the said grantors, in a direct line, or as nearly as practicable thereto, and the privilege of entering upon the premises of the said grantors for the purpose of laying, and when necessary altering, the said pipes or repairing them; also the privilege of erecting and repairing such cistern and reservoir, or other erection as may be deemed necessary for preserving the said water for the use aforesaid; and also all other rights and privileges in common with the said grantors, their heirs and assigns, which are secured to the said grantors by deed of perpetual lease from Samuel Ewalt and wife, bearing date the twenty day of March, in the year of our Lord one thousand eight hundred and twenty-six, and recorded in the office for recording of deeds, &c., in Allegheny county, in book L 2d, page 307, to George Heist, sen'r, who by deed, bearing date the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and twenty-eight, recorded in book M 2d, page 217, with Cynthia his wife, conveyed one moiety thereof to James Brown, and the other moiety being seized and taken in execution was sold by the sheriff of Allegheny county, and by deed bearing date the twenty-third day of April, in the year of our Lord one thousand eight hundred and thirty-four, duly acknowledged by the said sheriff, and entered according to the act of Assembly in the court of common pleas of said county, in docket No. 19, page 621, conveyed to George Gossin; who, with said James Brown and their wives, by deed dated January 9th, 1836, and Samuel Ewalt and wife,

by deed dated 21st November, 1836, both recorded in said county, in book p. , conveyed the same (inter alia) to said Hamilton and Robinson; together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of them the said William F. Hamilton and William V. Robinson and wife, in law, equity or otherwise howsoever, of, in, and to the same and every part thereof; to have and to hold the said above granted rights and privileges, with the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said United States of America, their successors and assigns, to and for the only proper use and behoof of the said United States, their successors and assigns, forever: And the said William F. Hamilton and William V. Robinson, their heirs, executors and administrators, do by these presents covenant, grant and agree, to and with the said United States of America, their successors and assigns, that they the said William F. Hamilton and William V. Robinson, their heirs, all and singular the hereditaments and premises herein above described and granted or mentioned and intended so to be, with the appurtenances, unto the said United States of America, their and assigns, against them the said William F. Hamilton and William V. Robinson and wife, heirs, and against all and every other person or persons whomsover lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend. In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals; dated the day and year first above written.

W. F. HAMILTON, [SEAL.]
W. V. ROBINSON, [SEAL.]
MARY ANNE ROBINSON, [SEAL.]

Sealed and delivered in the presence of us—
JOHN SARBER,
LEWIS LIVERMORE.

Received the day of the date of the above indenture, of the above named United States of America, the sum of two thousand dollars, the consideration of the above mentioned rights and privileges in full.

HAMILTON & ROBINSON.

The twenty-eighth day of November, anno Domini 1836, before me, a justice of the peace, in and for said county, personally came the above named William F. Hamilton, William V. Robinson, and Mary Anne, his wife, and acknowledged the above indenture to be their act and deed, and desired the same might be recorded as such. She, the said Mary Anne, being of lawful age, and the contents of the said deed being fully made known to her, and by me examined separate and apart from her said husband, declared that she did voluntarily and

of her own free will and accord sign and seal, and as her act and deed deliver the same, without any coercion or compulsion of her said husband. In witness whereof I have hereunto set my hand and seal the day and year above written.

JOHN SARBER. [SEAL.]

ALLEGHENY COUNTY, *ss.*

I, Samuel Fahnestock, recorder of deeds, &c., in and for said county, do hereby certify, that the foregoing is a true copy of a deed remaining of record in my office, recorded November 28th, A. D. 1836, in deed book, vol. 52, page 480.

[Seal of Recorder's Office, of Allegheny county.]

Given under my hand and seal of office, at Pittsburgh, this 14th day of February, 1852.

SAM. FAHNESTOCK, *Recorder.*

Exhibit "B," referred to in the foregoing bill.

This indenture, made the thirteenth day of January, in the year of our Lord one thousand eight hundred and forty-eight, between William Black, of the city of Pittsburgh, county of Allegheny, Pennsylvania, party of the first part, and James Irwin, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, unto him well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowleged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said party of the second part, his heirs and assigns, all that certain piece of ground, with the buildings thereon erected, situate in the borough of Lawrenceville, Allegheny county aforesaid, known as "the Soft Spring Paper Mill property," the said piece of ground being estimated as containing four acres, more or less, and being specified and described in the lease from Samuel Ewart to George Hirst, bearing date the 24th day of February, A. D. 1846, as a field containing four acres, more or less, adjoining the land occupied by Robert Spence, in Pitt township, with a still-house and mill, together with the use of the water from the spring, from *from* the fence down that encloses said field, &c. The said lot or piece of ground being subject to an annual ground rent of one hundred dollars, payable semi-annually on the first days of April and October in each year, to the said Samuel Ewalt, his heirs and assigns forever; the terms, conditions, privileges, limitations, and descriptions whereof will, on reference thereto, be found more fully set forth in the following mentioned deeds and the records thereof in Allegheny county aforesaid, namely:—1st. Deed of perpetual lease from Samuel Ewalt and wife to George Hirst, dated March 23d, A. D. 1826, and recorded in book L 2d, page 307, &c. 2d. Deed from George Hirst and wife to James Brown, for one equal half part, dated September 29th, A. D. 1828, and recorded in deed book M 2d, page 217.

3d. Deed from William Lecky, esq., high sheriff, &c., for the remaining half part, dated March 29th, A. D. 1834, and recorded in deed book X 2d, page 340, &c., conveyed all the interest of the said George Hirst therein to George Gossin. 4th. Deed from James Brown and wife and George Gossin and wife to William F. Hamilton and William V. Robinson, dated January 9th, 1836, and recorded in book C 3d, page 473, &c. 5th. Deed from Samuel Ewalt and wife to William F. Hamilton and William V. Robinson, for privilege of spring, &c., dated November 21st, A. D. 1836, and recorded in book C 3d, page 471. 6th. Deed from William V. Robinson and wife and William F. Hamilton to the United States of America, for privilege of one half the spring, &c., dated November 26th, A. D. 1836, and recorded in book C 3d, page 480. 7th. Deed from William V. Robinson and wife and William F. Hamilton to James Caldwell, dated June 13th, A. D. 1842, and recorded in book P 3d, page 451. 8th. From E. Trovillo, esq., high sheriff, &c., dated December 16th, A. D. 1843, in book T 3d, volume 68, page 105, conveying all the interest of the said James Caldwell therein to William Black, party of the first part to these presents. 9th. Agreement between Samuel Ewalt, Francis Stein, and William Black, in relation to the road leading past said premises, dated September 13th, A. D. 1845, and recorded in book X 3d, page 370. Together with all and singular the buildings, improvements, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of the said party of the first part in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof; to have and to hold the said piece or lot of ground and all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of the said party of the second part, his heirs and assigns forever; and William Black, the said party of the first part, for himself, his heirs, executors, administrators, doth, by these presents, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the first part, his heirs, all and singular the hereditaments and premises herein above described, and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against his, the said party of the first part, his heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend. In witness whereof the said party of the first part hath to these presents set his hand and seal. Dated the day and year first above written.

WILL. BLACK. [SEAL.]

Sealed and delivered in the presence of us,
AND. McMASTERS.

Received the day of the date of the above indenture, of the above named James Irwin, the sum of two thousand dollars, lawful money of the United States, being the consideration money above mentioned in full.

WILL. BLACK.

Witness—AND. MCMASTERS.

CITY OF PITTSBURG, *ss.*

On the thirteenth day of January, A. D. 1848, before me, one of the aldermen, in and for said city of Pittsburgh, came the above named William Black, and acknowledged the above indenture to be his act and deed, and desired that the same might be recorded as such. Witness my hand and seal the day and year aforesaid.

AND. MCMASTERS, [SEAL.]
Alderman.

ALLEGHENY COUNTY, *ss.*

I, Samuel Fahnestock, recorder of deeds, &c., in and for said county, do hereby certify that the foregoing is a true and correct copy of a deed remaining of record in my office, recorded January 14th, A. D. 1848, in deed book, vol. 80, page 210.

[Seal of Recorder's Office, of Allegheny county.]

Given under my hand and seal of office, at Pittsburgh, this 14th day of February, 1852.

SAM. FAHNESTOCK,
Recorder.

Exhibit "C," referred to in the foregoing bill.

MAJOR BELL, *Allegheny Arsenal.*

SIR: The United States Government have now in use a pipe conveying the water from my spring to the Allegheny arsenal, which is over four times the capacity of that contracted for. During three years past I have sought redress by repeated applications to the War Department, and recently by appeal to the President of the United States, without any satisfactory result. Desirous of having the question at issue definitely settled, I hereby notify you, that unless some satisfactory proposition be made by the Government within thirty days, I will cut off the pipe referred to.

Respectfully, your ob't servant,

JAMES IRWIN.

Lawrenceville, 16th January, 1852.

Exhibit "A," referred to in James Irwin's answer.

This indenture, made the 21st day of November, A. D. 1836, between Samuel Ewalt, esq., of Pitt township, in the county of Allegheny, and the Commonwealth of Pennsylvania, and Anna his wife, of the one part, and William V. Robinson and William V. Hamilton, of the city of Pittsburgh, of the other part, witnesseth: That the said parties of the first part, for and in consideration of the sum of $300,

lawful money of the United States of America, unto him well and truly paid by the said parties of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, release, convey, and confirm unto the said parties of the second part, their heirs and assigns, all the right and privilege to use, divert, and carry away from the fountain or spring by which the paper-mill of Hamilton and Robinson, the parties of the second part, is now supplied, situate in Pitt township aforesaid, so much of the water of said spring or fountain as shall fill, under a head of four inches, with a constant stream, a pipe or tube not exceeding one inch square, and to carry away the same by tubes or pipes of any convenient size through the premises of the said grantor in any direct line, or as nearly as practicable thereto, and to enter upon the land through which the said pipes may pass for the purpose of excavating the same, and of laying, examining, raising, and repairing said pipes at any time or times. And the said Samuel Ewalt, for himself, his heirs, and executors, and administrators, doth covenant that the head of said spring or fountain shall be preserved from by fowls, cattle, or other creatures, or in any wise disturbed or impaired in its purity; together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainder, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of the said party of the first part in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof; to have and to hold the said described privilege in the spring or fountain aforesaid, and the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said parties of the second part, their heirs and assigns, to and for the only proper use and behoof of the said parties of the second part, their heirs and assigns, forever. And the said Samuel Ewalt, party of the first part, for himself, his heirs, and executors, and administrators, doth, by these presents, covenant, grant, and agree to and with the said parties of the second part, their heirs and assigns, that he, the said party of the first part, and his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned, and intended so to be, with the appurtenances, unto the said parties of the second part, their heirs and assigns, against them, the said parties of the first part, and their heirs and assigns, and every person or persons whatsoever, lawfully claiming or to claim the same, or any part thereof, shall and will warrant and forever defend.

In witness whereof the said parties of the first part have to these presents set their hands and seals. Dated the day and year first above written.

SAM. EWALT, [SEAL.]
ANNA EWALT, [SEAL.]

Sealed and delivered in presence of us—
JOHN SARBER,
JOHN EWALT,
DAVID MECARGO.

Depositions on part of complainants.

In the circuit court of the United States, for the western district of Pennsylvania, in the third circuit.

[Seal of the Circuit Court of U. S., W. D. of Penn'a.]

No. 1, of May term, 1852.

UNITED STATES OF AMERICA
vs.
JAMES IRWIN.

The President of the United States, to Richard Biddle Roberts, esq., of the city of Pittsburgh, in the county of Allegheny.

Know you that, in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the western district of Pennsylvania, in a certain action or bill in equity therein depending, wherein the said United States of America are complainants, and James Irwin respondent, to call before you, at a certain day and place by you for that purpose appointed, all and every person or persons who may be named to you by the said United States of America as witnesses in said action, and then and there to examine them on their respective oaths or affirmations, on certain interrogatories hereunto annexed touching the premises, and to reduce their testimony to writing; and when you shall have so done you are to send the same to the said court, closed up under your seals, firmly and distinctly set, together with this writ.

Witness the Hon. Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this twenty-ninth day of September, A. D. 1852, and of the independence of the United States the seventy-seventh.

H. SPROUL, *Clerk.*

By virtue of the annexed commission, issued by the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, in the case of the United States of America, complainants, and James Irwin, respondent, and to me directed, I proceeded to take the testimony hereto annexed, at my office, in the city of Pittsburgh, on Saturday the sixteenth, Saturday the twenty-third, and Saturday, the thirtieth days of October, A. D. one thousand eight hundred and fifty-two, in presence of J. Bowman Sweitzer, esq., (during the two first days mentioned,) attorney of the U. S., W. D. of Pa.,

and James J. Kuhn, esq., counsel for the United States, James Irwin, the respondent, and Alex. W. Foster, esq., his counsel.

R. BIDDLE ROBERTS,
Commissioner.

Thomas J. Rodman, a witness produced and sworn on part of complainants, says: I am acquainted with the arrangement for conducting water from a spring to supply the Allegheny arsenal with water, and have been since the fall of 1841; they are the same now all outside the arsenal wall as they were then, except the addition of pipes to secure the air-valves. I have heard the statement of Mr. Giles S. Bates with regard to the size of pipes, bore, &c., and it is to the best of my knowledge correct; if the water from the spring were delivered by a one inch pipe it would be nine and a half times less than at present, (by the formula of Bouchelar,) or the present quantity is nine and a half times greater than if delivered by a one inch pipe; a one inch pipe would be more liable to obstruction by the deposition of sediment than the present pipe. If a one-inch copper pipe, connecting the cistern with the iron pipe, were substituted for the one now in use, the quantity of water discharged would not be materially effected, and would, owing to what is called the contraction of the fluid vein, be increased by the substitution of the one inch pipe two inches long in place of the one now in use. The distance from the spring to Mr. Irwin's works does not exceed one hundred yards. My opinion is that the quantity of water discharged by Mr. Irwin's pipe would be equal to the amount discharged by the United States pipe; the quantity of water delivered by two pipes of equal diameter are inversely as the square roots of their lengths, and directly as the square root of the difference of level of their points of discharge, both beginning on the same level. I am not sufficiently well acquainted with the relative distances to state positively what would be the relative quantities discharged by the two pipes now in use.

Cross examined.

The pipe from the reservoir to the lower grounds of the arsenal is a three inch pipe; that is my impression, I am not positive. The pipe that leads from the reservior to the arsenal is connected with the one which leads the water from the spring to the reservoir; the principal part of the water used in the arsenal grounds is drawn on the lower level; the pipes are so arranged that the water may continue directly from the spring down or into the reservoir, and when the spring supplies more than is used it is stored away in the reservoir; (if air be excluded from where water enters a one-inch pipe, the diminution in quantity delivered caused by the pressure of water at the point of delivery would be the same as would be caused by elevating the point of discharge to the level of the surface of the water as the point of discharge.) The above is in answer to the following question: whether a pipe one inch in diameter would not discharge more water—the point of discharge being

accessible to air—than a pipe of the same diameter and same level discharging under a pressure of six feet water?

If air were admitted at the receiving end of the pipes, what then would be the proportion of their discharge?

I could not say what the proportion would be, but would say that the one discharging in air would probably deliver a greater quantity of water, owing to the water above the level of discharge preventing the escape of the air.

My impression is that the point of delivery at the reservoir is something lower than Mr. Irwin's point of delivery; the water used on the lower square is from fifty to sixty feet lower than the reservoir. I cannot say whether the United States pipe, when cleared of air, would take away all the water furnished by the spring or not; I know that both pipes will. The flow of water through the United States pipe is much greater at sometimes than at others; this does not occur daily, but does occur frequently, the intervals not being equal. The centre of the pipes conducting to Mr. Irwin's factory and to the reservoir are on the same level, and the holes leading into the pipes are on the same level and of the same size.

Direct.—Does the fact that the arsenal is fifty feet below the reservoir, according to the manner in which the pipes are connected, increase or diminish in any way the quantity of water delivered by the pipes, or is the quantity of water the same as it would be if it were all discharged in the reservoir?

Ans. The quantity by this arrangement is not affected, and is the same as if delivered in the reservoir.

What is the cause of the United States pipe varying in the discharge of water?

Ans. The cause is, that the level of the water at the receiving end of the pipes falls so as to admit a portion of air being drawn in along with the water, and this air collects in the highest portions of the pipe and breaks the draught or flow of water which would be due to the difference of level between the receiving and discharging ends of the pipe. Valves are placed on the pipe at the summit of each eminence of ground, over which the pipe passes in its course from the spring to the reservoir, to discharge the same, the discharge being effected by closing the end of the pipe at the reservoir by means of a stop-cock, and opening the air-valves, and allowing the water to flow in until it is completely filled, the valves being closed as the water reaches them successively, beginning with the lowest, then by opening a stop-cock at the reservoir the supply furnished is that due to the difference of the level of the two extremities of the pipe.

T. J. RODMAN.

William V. Robinson, a witness produced, sworn and examined on part of the respondent, says:

William F. Hamilton and myself were the owners of the water privilege of this spring at the time the United States purchased. I trans-

acted all the business with Colonel Baker; he wanted to have an inch tap with a head of ten inches or a foot; I tried this and found it would take all the water in the spring. I made no agreement with Colonel Baker, except the one which is on record. They have no right to anything but what Mr. Irwin has; I sold to the United States the one-half of the spring which might go through any sized pipe; that was the agreement in the deed; the one-half of the spring was reserved for the property; the matter I believe to be a question in natural philosophy; Mr. Irwin is entitled to one-half of the water; the supply for the United States was to be conveyed through the same sized pipe as that to the factory.

Cross examined.—Was not the intention in the deed that each party should have half the water?

Answer. The deed is on record and shows for itself.

W. V. ROBINSON.

Giles S. Bates being produced on part of complainant, and sworn, says: I was employed at the United States arsenal at Lawrenceville, Allegheny county, Pennyslvania, for about sixteen years; I ceased to be employed there about the last of June, 1852. I know the spring from which the arsenal is supplied with water, on the land of Samuel H. Kellar; it is the same spring from which Mr. James Irwin's factory is supplied; the distance from the spring to the reservoir of the arsenal is five hundred and forty-seven yards or thereabouts; the ground is somewhat broken or uneven. There are three ravines; the first ravine from summit to summit is about two hundred feet wide, and from twenty-five to thirty feet deep; the second is about one hundred feet wide and about fifteen feet deep; the third is about fifty feet wide and from eight to ten feet deep, that is the width and depth at the point where the United States pipes pass; the pipes follow the inequalities of the ground; they are about three feet below the surface of the ground, from that to four feet; the pipe from the spring to the reservoir is two-and-a-half bore pipe; the copper pipe connecting the iron pipe with the cistern is two inches and five-eighths, and about one foot long; the hole through the body of the cistern is one inch in diameter; the copper pipe is bolted to the cistern by a flange; the hole through which the water passes to supply Mr. Irwin's works is the same size as the one through which it passes to supply the arsenal, and the two holes are on the same level. I was in the employment of the United States when the pipes referred to for the supply of the arsenal were laid; I was present most of the time while they were laying them; they are the same pipes which are now in use; they have been in use since 1837. I saw Mr. William V. Robinson present on two occasions when the pipes were being laid; he was present with Colonel Baker; I heard him express no dissatisfaction; they appeared to have a perfect understanding in the arrangement, and that arrangement is the one now in use. I was and am still under the impression that the copper pipe was an inch one originally, but I am not positive; with that exception the arrangement is

now as it was then. I do not know of any change in the size of the pipe since; some pipes were put down to secure the air-valve, but no alteration in the size of the pipe; any deposites in the pipes collect in the ravines, and when the air gets into the pipes from the cistern it has to be drawn out at these air-valves in order to fill the pipes; the amount of water discharged at the reservoir would fill a three-quarter inch pipe. I have had partial charge for some time of the work; have been frequently at the spring; assisted to clear the pipes of air and to fill them. The ground where the United States pipe crosses from the ground of Mr. Irwin is about fifteen feet higher than where the pipe discharges its contents at Mr. Irwin's factory; the ground through which the pipe passes from the spring to Mr. Irwin's factory is a regular slope. The distance from the spring to where the United states pipe passes from Mr. Irwin's land is greater than from the spring to Mr. Irwin's factory; it is hardly one-third of the distance to the reservoir; the body or rim of the cistern through which the inch hole passes is about seven-eighths thick.

Question. When the United States arsenal and Mr. Irwin's factory are both in operation, what is the relative amount of water drawn off by the pipes of each?

I believe the amount to be about equal.

Cross examined.—I do not know that the ravines spoken of would make any difference in the flow of the water, provided there was a sufficient head at the spring to exclude the air from the pipe; if air was admitted into the pipe, I am of opinion that the water would still continue to flow, but to a limited extent.

We can see the water flowing from the United States pipe into the reservoir. When the reservoir was first established, the pipe discharged about four feet from the bottom of the reservoir, and I have frequently seen the water discharging into the reservoir from the pipe. That mode of discharging was discontinued between seven and eight years ago. It discharged through a brass cock, two-inch bore. The United States used the water for ornamental purposes on the parade at intervals for a number of years, when the supply of water would permit. The centres of the holes in the cistern from which the water is taken to the reservoir and to Mr. Irwin's factory are on the same level, and the centres of the pipes are on the same level, but the difference in the diameter of the pipes throws the United States pipe about three fourths of an inch below Mr. Irwin's pipe. The diameter of Mr. Irwin's pipe is an inch bore, I should judge.

Direct.—I think the deposite of sediment in the pipe in the ravines would obstruct the water, unless there was a sufficient draft in the pipe to draw it out. I know that sediment has collected in the pipe in the bottom of the large ravine. The sediment was a kind of sand, oxide of iron, and of a muddy nature.

Cross ex.—I only know of sediment having collected in the pipe once so as to require opening during the time I was at the arsenal. The air-valves spoken of were constructed to insure a continuous flow of

water, and in order to draw off the foul air and allow the water to flow; and they answered the purpose of their construction. The discharge of the water into the reservoir from the two-inch cock is from a half to three-quarters of an inch. If the pipe used by the United States had been of lead instead of iron, the obstruction from sediment would probably not have been as great. There is quite a sediment comes from the water of this spring. We used it in our boilers at the public works, and found it quite objectionable from the accumulation of sediment—of fine sand. We have been compelled to clean out the reservoir from sediment, but I cannot say whether it has been necessary to clean out the cistern at the spring or not.

Direct.—The flow of water mentioned as coming from the brass cock at the reservoir was the entire supply received from the spring.

G. S. BATES.

William Jancey, a witness produced, sworn and examined on part of the complainants, says: I have been employed at the Allegheny arsenal for fifteen years. I engaged there first as a carpenter, and since 1844 I have had charge of the water-works, with the exception of seven months, when I was absent. I refer to the water-works conducting water from the same spring which supplies Mr. Irwin's factory. There is an iron kettle placed in the spring, pierced with two one-inch holes, one to supply the United States arsenal, the other to supply Mr. Irwin's factory. These holes, as near as I can tell, are on the same level. The size of the United States pipe, which is copper, is two inches and seven-eighths in diameter on the outside, which would give two inches and five-eighths in the clear; it is thirteen inches long from the kettle to the iron pipe. The iron pipe is two inches and a half in the clear. Mr. Irwin's pipe is one inch bore; the United States pipe being larger than the bore, it projects about three-quarters of an inch all round the hole. The United States pipe crosses three ravines between the spring and the reservoir. I have heard the description given by Mr. G. S. Bates, and believe it to be correct. I saw a portion of the pipes laid, and I inserted a stop-cock in the pipe to let out the sediment at the bottom of the first ravine. At times the United States pipe draws more water than Mr. Irwin's, and at times it loses, so that the quantity drawn by both pipes is near about equal. The discharge from the United States pipe is now under water, at the bottom of the reservoir. The present arrangement for drawing water from the spring to the arsenal has been in use about fifteen years. Mr. Irwin's pipe has a regular gradual descent from the spring to his factory. I do not know the distance from the spring to Mr. Irwin's factory. There is a stop-cock in the pipe at the bottom of the reservoir, which is left open to discharge the water into the reservoir.

Cross examined.—I know of the water from the pipe directed towards Mr. Irwin's factory having been discharged on the surface of the ground; it was a one-inch bore iron pipe. At that time the iron pipe was corroded, and Mr. Irwin renewed it by placing a lead pipe, one

inch bore. I cannot say how long this flow continued. The iron pipe at the time spoken of was much corroded and obstructed. Hamilton & Robinson's factory never went into operation after the purchase of the water by the United States. Mr. Cadwell had it in operation making buff leather for the arsenal, but how long I do not know.

The water flowing from the iron pipe spoken of as discharging on the surface could have been passed by a pipe three-eighths bore. In case the water should rise about the kettle spoken of, the waste water is carried off through a two-inch copper pipe. The water discharged by the iron pipe on the surface of the ground was the only discharge from the iron kettle which Mr. Irwin's pipe had. The water from the spring is admitted into the kettle through ten or twelve one-inch holes pierced in the sides of the kettle, and as the water increases in the spring there are several small holes above, pierced in the kettle, to admit the same. I have seen the water running into these small holes. The only channel for the water from the kettle at the time of the discharge through the obstructed iron pipe of Mr. Irwin was through the United States pipe, and the United States had a full supply of water. The pipe used by the United States for ornamental purposes in the parade ground is a lead pipe, three-quarters inch bore. The United States, at the time of Mr. Irwin's purchase, held possession of the spring-house. It had only one key, and that the United States kept. After Mr. Irwin got possession of the property, and while Major Harding was commandant, he directed me to change the lock on the spring-house, because Mr. Irwin had obtained a key to the one then in use. Captain Harding directed me to divide the water in the kettle by putting in two five-eighths stop-cocks at the two inch holes, so as to cause a head of water to remain in the kettle. We removed the stop-cock from the United States pipe and inserted a one-inch bore copper pipe, with a float attached, for the purpose of dividing the water by recommendation of Lt. Rodman. The supply of water received through the float depended upon the height of the water in the kettle. There was no alteration in the flow of water passing through the stop-cock attached to Mr. Irwin's pipe.

The number of times at which we let the air out of the United States pipes depend upon the depth of the water in the reservoir. I have only done it three times in the last year. The cock placed at Mr. Irwin's pipe would convey about three-eighths bore.

Direct.—Mr. Irwin never applied to the United States for permission to enter the spring-house, and never was refused to my knowledge. The key belonging to the United States for opening the spring-house was lost, and Mr. Irwin informed me that he had borrowed a key from Sergeant Coalson to get one made by for his own use. Mr. Irwin told me that a man named Baxter came to the spring-house and got water from the kettle. I do not know that the commanding officer at the arsenal made any objection to Mr. Irwin's having a key. Shortly after Mr. Irwin got a key I had recourse to the spring-house; I found a cast-iron lid on the kettle fastened down with

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a padlock. I then went down to the arsenal and reported the fact to the commanding officer, who requested me to call on Mr. Irwin and inquire the cause of the kettle being locked. I saw Mr. Irwin, and he stated that his object in locking the kettle was to prevent Baxter from taking any water out of the kettle or interfering with the pipes. I reported this to the commanding officer, and he requested me to call on Mr. Irwin for the key of the lid of the kettle, so that we could have one made by it for the use of the United States. Mr. Irwin gave me the key of the kettle, but requested me to return it at a certain time. I took the key to the commanding officer, who considered it useless to get a key made, and thought Mr. Irwin could keep it, and I returned it to Mr. Irwin, in whose possession it still is, though the kettle has been unlocked for some time. The object of changing the lock on the spring-house was that we had a deficiency of water in the reservoir. I went up to the spring-house, and on examination of the kettle I found the one inch hole, conveying the water to the arsenal, plugged up with a fine plug. I immediately returned to the arsenal and reported the same to Captain Harding, who commanded at that time; he directed me to take a padlock with me, to take the plug out of the hole, and call on Mr. Irwin to ascertain the cause of the hole being plugged up. I called at Mr. Irwin's house; he was not at home. I went to his factory and inquired of Mr. Irwin's men, and inquired which of them had plugged up the hole.

Mr. Kuhn, for the United States, asks, what did the men say?

Question objected to by Mr. Foster, for defendant.

Answer. A man named John Grant said he had done it; he was in Mr. Irwin's employ.

Mr. Irwin was not at home, and I believe was in Kentucky; Captain Harding directed me to put on a padlock, to prevent John Grant and Baxter from interfering with the spring.

The padlock remained on until Mr. Irwin returned, a week or two. At the request of Mr. Irwin to have access to the spring, the old lock was replaced. The stop-cocks and float (heretofore mentioned) were in use about nine months; they were removed about two years ago. Mr. Irwin was present when these stop-cocks and float were put in; he made no objection, but assisted us. The object of putting in the stop-cocks was to equalize the division of the water in the spring, and to prevent the air from getting into the arsenal pipes; it equalized the water; I do not think one party got more than the other. Mr. Irwin not being satisfied with the arrangement they were removed; he would not have his pipes obstructed.

The witness desires to correct a mistake in his cross examination, and says:

I find on examination, that there are eleven holes in the kettle discharging the water from the spring. I stated before that they were one inch holes; on examination I find five three-quarter inch holes and six half-inch holes; these are the lower row of holes.

Cross examined.—The padlock remained on the spring-house during

Mr. Irwin's absence, and for about two weeks after his return. I remember going to the spring-house one Sunday morning with Lieutenant Kingsbury, and seeing Mr. Irwin who had taken out the stop-cock in his pipe. Lieutenant Kingsbury asked Mr. Irwin to equalize the water; Mr. Irwin said he did not want his pipe obstructed at all. Mr. Irwin got possession of the key of the spring-house through Sergeant Coalson or William Baxter.

WM. JANCEY.

I certify that the foregoing testimony was reduced to writing by me, in presence of the persons named in the caption and of the witness, read to each witness after it was so reduced to writing, and signed by said witness in my presence.

R. BIDDLE ROBERTS,
Commissioner.

Commissioner fees $15.

UNITED STATES OF AMERICA,
Western district of Pennsylvania, ss.

I, Henry Sproul, clerk of the circuit court of the United States for the western district of Pennsylvania, in the third circuit, do hereby certify that the foregoing is a true exemplification of the record in the case of the United States vs. James Irwin, No. 1 of May term, 1852, in equity, together with true copies of the exhibits, testimony, &c., in file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Pittsburgh, this day June, one thou-
[SEAL.] sand eight hundred and fifty-three, and of the independence of the United States the seventy-seventh.

H. SPROUL, *Clerk.*